

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FREDERICK LUCERO,

Petitioner,

vs.

No. CV 20-00773 KWR/KRS

STATE OF NEW MEXICO,

Respondent.

ORDER PURSUANT TO CASTRO V. UNITED STATES

THIS MATTER is before the Court on the Motion for Habeas Corpus filed by Petitioner, Frederick Lucero (Doc. 1). The Court notifies Lucero that it is considering recharacterizing his Motion as a petition for writ of habeas corpus under 28 U.S.C. § 2254 and will grant Petitioner leave to withdraw or amend the Motion.

Lucero's Motion is captioned in the "Second Judicial District Court, County of Bernalillo, State of New Mexico" and seeks relief under "Rule 5-802 NMSA." (Doc. 1 at 1). He states that he intends to challenge his state court criminal conviction on ineffective assistance of counsel grounds. (Doc. 1 at 1). However, the envelope containing the Motion was addressed to this "United States District Court for the District of New Mexico." (Doc. 1 at 2). The Court intends to recharacterize the Motion as a first 28 U.S.C. § 2254 petition for writ of habeas corpus by a prisoner in state custody. Pursuant to *Castro v. United States*, 540 U.S. 375 (2003), when

a court recharacterizes a pro se litigant's motion as a first § 225[4] motion . . . the district court must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 225[4] motion will

be subject to the restriction on “second or successive” motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 225[4] claims he believes he has.

Id. at 383. Consistent with *Castro*, the Court notifies Lucero that it intends to recharacterize his Motion as a first § 2254 petition and afford him an opportunity to withdraw the Motion or to amend it to add additional claims he may have. *See* Rule 2 of the Rules Governing Section 2254 Proceedings for the United States District Courts (providing that a petition for writ of habeas corpus must “(1) specify *all grounds* for relief available to the petitioner; (2) state the facts supporting each ground; (3) state the relief requested; (4) be printed, typewritten, or legibly handwritten; and (5) be signed under penalty of perjury by the petitioner or by a person authorized to sign it for the petitioner.”) (emphasis added). If Lucero fails to timely amend or withdraw his Motion, then Lucero’s Motion may be recharacterized and any subsequent § 2254 motions will be subject to the restriction on “second or successive” motions in 28 U.S.C. §§ 2244(b).

IT IS ORDERED that Petitioner Frederick Lucero is **GRANTED** leave to amend or withdraw his Motion (Doc. 1), which the Court intends to recharacterize as a first petition for writ of habeas corpus under 28 U.S.C. § 2254, within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that the Clerk of the Court **MAIL** a copy of this Order, together with a form § 2254 petition and instructions to Lucero.



UNITED STATES MAGISTRATE JUDGE